



House of Representatives

General Assembly

File No. 353

February Session, 2018

House Bill No. 5264

House of Representatives, April 10, 2018

The Committee on Government Administration and Elections reported through REP. FOX of the 148th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

AN ACT PERMITTING BUSINESSES TO SEEK AN OPINION OF THE ATTORNEY GENERAL REGARDING STATE AGENCY REGULATIONS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 3-125 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2018*):

3 (a) The Attorney General shall appoint a deputy, who shall be
4 sworn to the faithful discharge of his or her duties and shall perform
5 all the duties of the Attorney General in case of his or her sickness or
6 absence. [He] The Attorney General shall appoint such other assistants
7 as he or she deems necessary, subject to the approval of the Governor.
8 The Attorney General may also appoint not more than four associate
9 attorneys general who will serve at the pleasure of the Attorney
10 General and will be exempt from the classified service.

11 (b) The Attorney General shall have general supervision over all

12 legal matters in which the state is an interested party, except those
13 legal matters over which prosecuting officers have direction. [He] The
14 Attorney General shall appear for the state, the Governor, the
15 Lieutenant Governor, the Secretary, the Treasurer and the Comptroller,
16 and for all heads of departments and state boards, commissioners,
17 agents, inspectors, committees, auditors, chemists, directors, harbor
18 masters, and institutions and for the State Librarian in all suits and
19 other civil proceedings, except upon criminal recognizances and bail
20 bonds, in which the state is a party or is interested, or in which the
21 official acts and doings of said officers are called in question, and for
22 all members of the state House of Representatives and the state Senate
23 in all suits and other civil proceedings brought against them involving
24 their official acts and doings in the discharge of their duties as
25 legislators, in any court or other tribunal, as the duties of his or her
26 office require; and all such suits shall be conducted by [him] the
27 Attorney General or under [his] the Attorney General's direction. All
28 legal services required by such officers and boards in matters relating
29 to their official duties shall be performed by the Attorney General or
30 under his or her direction. All writs, summonses or other processes
31 served upon such officers and legislators shall, forthwith, be
32 transmitted by them to the Attorney General. All suits or other
33 proceedings by such officers shall be brought by the Attorney General
34 or under the direction of the Attorney General.

35 (c) When any measure affecting the State Treasury is pending before
36 any committee of the General Assembly, such committee shall give
37 [him] the Attorney General reasonable notice of the pendency of such
38 measure, and [he] the Attorney General shall appear and take such
39 action as he or she deems to be for the best interests of the state, and he
40 or she shall represent the public interest in the protection of any gifts,
41 legacies or devises intended for public or charitable purposes. [All
42 legal services required by such officers and boards in matters relating
43 to their official duties shall be performed by the Attorney General or
44 under his direction. All writs, summonses or other processes served
45 upon such officers and legislators shall, forthwith, be transmitted by
46 them to the Attorney General. All suits or other proceedings by such

47 officers shall be brought by the Attorney General or under his
48 direction. He]

49 (d) The Attorney General shall, when required by either house of
50 the General Assembly or when requested by the president pro tempore
51 of the Senate, the speaker of the House of Representatives, or the
52 majority leader or the minority leader of the Senate or House of
53 Representatives, give his or her opinion upon questions of law
54 submitted to [him] the office of the Attorney General by either of said
55 houses or any of said leaders. [He] The Attorney General shall advise
56 or give his or her opinion to the head of any executive department or
57 any state board or commission upon any question of law submitted to
58 [him. He] the office. The Attorney General shall give an opinion when
59 requested by a business in the state that has a bona fide dispute with a
60 state agency concerning the application of a regulation of such
61 agency. For purposes of this subsection, "agency" and "regulation"
62 have the same meanings as provided in section 4-166. The Attorney
63 General may procure such assistance as he or she may require. The
64 Attorney General shall prepare a topical and chronological cross-index
65 of all legal opinions issued by the office of the Attorney General and
66 shall, from time to time, update the same.

67 (e) Whenever a trustee, under the provisions of any charitable trust
68 described in section 45a-514, is required by statute to give a bond for
69 the performance of his or her duties as trustee, the Attorney General
70 may cause a petition to be lodged with the probate court of the district
71 in which such trust property is situated, or where any of the trustees
72 reside, for the fixing, accepting and approving of a bond to the state,
73 conditioned for the proper discharge of the duties of such trust, which
74 bond shall be filed in the office of such probate court. [The Attorney
75 General shall prepare a topical and chronological cross-index of all
76 legal opinions issued by the office of the Attorney General and shall,
77 from time to time, update the same.]

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>October 1, 2018</i>	3-125
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GAE *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 19 \$	FY 20 \$
Attorney General	GF - Cost	At least 960,000	At least 1,280,000
State Comptroller - Fringe Benefits ¹	GF - Cost	At least 349,000	At least 465,000

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill, which requires the Attorney General to provide an opinion on regulatory disputes if so requested by businesses, is expected to have a cost of at least \$1,309,000 to the General Fund in FY 19 (partial year) and an annualized ongoing cost of at least \$1,745,000. The Office of Attorney General would be expected to create a new department in order to have sufficient capacity to address the requirements of the bill.

The bill allows businesses that have a “bona fide dispute with ... application of a regulation” to seek an official Attorney General opinion on the matter. Currently, these opinions can only be requested by the legislature (i.e., either chamber or legislative leaders) or state agency heads. Requiring the Attorney General to respond to businesses on demand represents a substantial increase in duties.

¹The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 36.33% of payroll in FY 19 and FY 20.

The new department would be established in order to have in-house expertise in the following broad areas where regulatory action is common: 1) consumer protection, 2) education/health, 3) energy, 4) environment, 5) finance, 6) labor, and 7) transportation. The office would include one Assistant Attorney General 2 (\$100,000 annual salary, \$36,330 fringe) for each area (seven total), three Assistant Attorneys General (\$125,000 salary, \$45,413 fringe) to cover multiple areas as necessary, a department head (\$145,000 salary, \$52,679 fringe), and an administrative assistant (\$60,000 salary, \$21,798 fringe).

Number of Business Requests

State agencies vary considerably in the number of regulatory actions they may take in a given year, along with variance in number of actions began or closed in any particular year. Likewise, the severity of action can range from self-reported issues settled with consent orders to long-term disputes requiring both regulatory agency and Attorney General intervention.

For example, the Department of Energy and Environmental Protection reported an average of approximately 1,000 informal actions per year over the last five years, with fewer than 100 such actions that warranted referral to either the Attorney General or federal authorities.² The Department of Labor similarly had approximately 1,000 informal actions in 2017, but fewer than 10 instances that required use of regulatory action.³ The Department of Public Health reported over 400 regulatory actions and the Office of Early Childhood reported under 70 corrective actions.^{4,5}

The above examples are a sample of all corrective actions by state agencies towards businesses. The full number of such actions is

²http://www.ct.gov/deep/lib/deep/enforcement/reports/2017_totals_enforcement_statistics__5year_average_webpage.pdf

³<http://portal.ct.gov/-/media/DAS/Communications/Communications-List-Docs/Digest/Digest-2016-2017/Labor-Department-of.pdf>

⁴<http://www.portal.ct.gov/DPH/Regulatory-Action-Report/Regulatory-Action-Report>

⁵<http://www.ct.gov/oec/cwp/view.asp?a=4542&q=548448>

expected to be substantially larger. Within the full number of actions, a percentage were based on regulations while the remainder were based on statute. The bill allows businesses to request Attorney General assistance in only the former scenario. This stipulation is expected to provide a limit to the number of requests allowed. However, a large increase in the number of disputed actions is possible, as seeking an Attorney General opinion is expected to be considerably less costly to businesses than acquiring their own paid legal representation. Also, there is limited downside to businesses in seeking official opinions if they otherwise face a costly corrective action.

Given all the above, there is a large chance for volatility in the number of requests. This analysis assumes a minimum of 300 requests per year on an ongoing basis across all regulatory areas, while acknowledging the actual number is not known and could be substantially higher.

Conflict of Interest

Besides lack of capacity to deal with the expected number of requests for opinions, the Attorney General would also face conflict of interest issues if attempting to use current resources to cover business requests. Two of the core functions of the Office of the Attorney General are: 1) representing and providing advice to state agencies when faced with legal disputes and 2) pursuing legal actions against businesses with unlawful practices. A distinct, separate department within the office to respond to business requests would help mitigate the presence of these inherent conflicts of interest.

Multiple Areas of Expertise Needed

There are many different state agencies charged with regulating a multitude of topics and concerns. When state agency legal issues rise to the level of direct invention or representation by the Office the Attorney General, the Attorney General typically continues to rely on and work collaboratively with legal experts within the individual state agencies. As responding to business requests requires analysis

independent of the state agency personnel who develop, implement, or enforce the regulations being challenged, the Attorney General would need to develop substantial expertise in a variety of topical areas.

Acquiring Outside Counsel

The bill anticipates the Attorney General will sometimes contract with independent counsel in order to craft a portion of the required legal opinions. While it is possible the Attorney General will, indeed, contract out for some legal services, there are two main barriers to relying exclusively on contracted services to overcome the current lack of capacity within the office and the potential for conflict of interest: cost and private conflict of interest.

Contracted legal services can cost between \$200 and \$600 per hour and individual opinions might take as little as 10 hours or as much as a month or more. For illustrative purposes, were there 300 opinions sought, which took an average of 30 hours of work per opinion at the low end of the expected per hour fee, the total cost of contracting for all opinions (approximately \$1.8 million in this scenario) would outpace the annualized cost of establishing a separate office within the Office of the Attorney General.

Law firms which specialize in regulatory law often do so in order to represent businesses commonly involved in a specific area of regulation. It is possible that there will be limited opportunities to contract with law firms with sufficient expertise in a given topic area that are not already representing businesses being regulated by the state agency in question.

To the extent contracted services are used in lieu of state employees, cost estimates for fringe benefits would be decreased and costs directly to the Office of the Attorney General would be increased. To the extent contracted services are used to supplement any additional resources provided to the Attorney General, those costs would be in addition to the figures presented above.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation and the number of requests made for an opinion.

OLR Bill Analysis**HB 5264*****AN ACT PERMITTING BUSINESSES TO SEEK AN OPINION OF THE ATTORNEY GENERAL REGARDING STATE AGENCY REGULATIONS.*****SUMMARY**

This bill requires the attorney general to give an opinion when requested by a business in the state that has a bona fide dispute with a state agency concerning the application of one of its regulations. (It is unclear what constitutes a business in the state or who would determine whether a dispute is bona fide under the bill.)

The bill also makes technical changes including making numerous masculine pronoun references gender neutral.

EFFECTIVE DATE: October 1, 2018

COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable

Yea 9 Nay 8 (03/23/2018)